



ClientAlert

Introduction

Dear Reader,

This month saw a handful of new regulations that affect business in Vietnam. We've briefed them and outlined the most important changes from each new regulation. They cover numerous topics concerning Covid-19 relief, administrative penalties in the labour sector, and the operation of bailiffs in the courts.

As always, we hope you find this month's Client Alert helpful and wish you a rapid economic recovery from the ravages of Covid-19. We look forward to working with you.

Kind regards,
Indochine Counsel

In this issue

SBV supports customers affected by Covid-19.....	2
Administrative penalties in the sectors of labour, social insurance, and labour export.....	3
Employee benefits under Covid-19	4
Organization and operation of bailiffs	5

SBV supports customers affected by Covid-19

Following Directive No. 11/CT-TTg dated 4 March 2020 of the Prime Minister on tackling difficulties of businesses and ensuring social welfare during COVID-19, the State Bank of Vietnam (the “**SBV**”) published Circular No. 01/2020/TT-NHNN dated 13 March 2020 (“**Circular 1**”) regulating the restructuring of debt repayment terms, exemption and reduction of interest and fees, and retention of debt groups aimed at assisting customers and alleviating the impact of Covid-19.

The governing scope of Circular 1 includes: (i) credit institutions (except for policy banks) and branches of foreign banks (the “**banks**”); (ii) customers of banks (except for the customers being banks); and (iii) other organizations and individuals.

Under Circular 1, the affected customers may be entitled to the following:

Restructuring of debt repayment terms

The debt entitled to restructuring includes the principal balance and/or interest (including the debit balance of debts under Decree No. 55/2015/ND-CP) which satisfies all the following conditions:

- (i) The debt arose from lending or finance leasing activities;
- (ii) The obligation to repay the principal debt and/or interest arose within the period from 23 January 2020 to the day after three months have expired from the Prime Minister's declaration that the Covid-19 epidemic has ended; and
- (iii) The customer is incapable of making timely payment of the principal debt and/or interest under the executed loan/financial leasing agreement because the customer's turnover and income is reduced as a result of Covid-19.

Restructuring the repayment term of the debit balance will be implemented subject to the status of the loan balance, i.e., due or overdue, within specific timelines regulated in Article 4.2.

A Bank may make a decision to restructure the repayment term of any debt prescribed above upon the request of the customer and an assessment by the Bank of the customer's ability to repay, as appropriate to the level of impact of Covid-19. However, the debt concerned must not be debt which is in breach of law and the restructuring term (in case of term extension) cannot exceed 12 months from the final date on which the customer must fully repay the total of principal and interest under the executed loan/financial leasing agreement.

Exemption and reduction of interest and fees

Banks may exempt and reduce interest and fees in accordance with their internal rules applicable to debts arising from credit extension activities (except for purchasing and investing in corporate bonds) in cases that:

- (a) The obligation to repay the principal debt and/or interest is due in the period from 23 January 2020 to the day after three months from the Prime Minister's declaration that the Covid-19 epidemic has ended; and
- (b) The customer is incapable of making timely payment of the principal and/or interest under the executed agreement because the customer's turnover and income is reduced as a result of Covid-19.

Retention of debt group

The retention of a debt group categorized under the most recent regulations of the SBV prior to 23 January 2020 shall be applied to the following outstanding debts:

- (a) The repayment term of the loan balance is restructured under this Circular;
- (b) Interest on the loan balance is exempted or reduced as prescribed under this Circular; and
- (c) The outstanding loan balance prescribed in sub-clauses (a) and (b) above includes the outstanding balance for which restructuring, exemption or reduction of interest and adjustment of the debt group was implemented in accordance with SBV regulations within the period from 23 January 2020 to the day after 15 days from the effective date of this Circular.

Circular 1 took immediate effect to provide prompt support and limit the difficulties for businesses and people affected by Covid-19.

Administrative penalties in the sectors of labour, social insurance, and labour export

On 1 March 2020, the Government promulgated Decree No. 28/2020/ND-CP on penalties for administrative offenses in the sectors of labour, social insurance, and Vietnamese labour export to foreign countries pursuant to contracts ("**Decree 28**").

The levels of fines included in this article are applicable to organizations. To determine the level applicable to individuals, divide the listed fine in half.

Increase the level of fines

Decree 28 significantly raises the level of fines, including fines of up to VND100 million for business owners who fail to pay their employees. Some examples include:

- ✓ Employers who fail to pay more than 300 of their staff are fined VND100 million (Article 16.2).
- ✓ An employer who mobilizes 301 or more employers to work overtime in excess of the hours prescribed in Article 106.2(b) of the Labour Code or in excess of 12 hours in one day when working overtime on a public holiday, new year holiday or annual leave days are fined from VND120 to 150 million (Article 17.4).

- ✓ A foreign worker in Vietnam who works without a valid work permit or without a valid document certifying that he or she is not in the category requiring a work permit is fined from VND15 to 25 million (Article 31.3).

Supplementation of new violations

Decree 28 provides new violations eligible for administrative penalties, including:

- ✓ If employers conduct an act of labour coercion or mistreat employees, but do not meet the level justifying criminal prosecution, authorities may impose a fine up to VND150 million (Article 10.3).
- ✓ If the employer appropriates the employee's compulsory social insurance benefits, a fine at the level of 18% - 20% of the total amount appropriated shall apply, but the fine does not exceed VND150 million (Article 40.2).

Additional forms of penalty and measures for remedying consequences

Decree 28 specifically lists 12 additional forms of penalty along with 51 remedies. Some are new, such as the confiscation of the labour outsourcing license, confiscation of certificates of satisfaction of conditions to provide training on occupational safety and hygiene, etc.

Decree 28 came into force on 15 April 2020 and replaces Decree No. 95/2013/ND-CP dated 22 August 2013 (amended).

Employee benefits under Covid-19

Due to the outbreak of COVID-19 and the long closure of businesses under Directive No. 15/CT-TTg and Directive No. 16/CT-TTg of the Prime Minister, a number of enterprises suspended their operations and many employees were furloughed. In response, the Ministry of Labour, Invalids and Social Affairs ("**MOLISA**") issued Official Dispatch No. 1064/LDTBXH-QHLDTL guiding issues relating to payment of wages and benefits for employees during work suspension due to Covid-19.

Under this Official Dispatch, payment for employees during work suspension is as follows:

1. For employees who are furloughed due to the direct impacts of COVID-19, wages during the period of suspension must comply with Article 98.3 of the Labour Code (the payment must be agreed by both parties but must not be lower than the region-based minimum wages prescribed by the Government). Some examples for reference only include:
 - ✓ Expat employees who are not allowed to enter Vietnam to return to work;
 - ✓ Employees who are in compulsory quarantine periods; and

- ✓ Employees who are furloughed due to the enterprise or its functional units being unable to operate because the employers or other employees are in quarantine period or not allowed to return to work.
2. Enterprises who cannot provide adequate employment due to supply shortages or market reductions may temporarily reassign employees as agreed in their labour contracts in accordance with Article 31 of the Labour Code. In case the employer is unable to pay the employees due to prolonged work suspension, both parties may reach an agreement on temporary suspension of the labour contracts in accordance with Article 32 of the Labour Code. Employers that scale down must comply with regulations of Article 38 or Article 44 of the Labour Code.

In other cases, the provincial Department of Labour, War Invalids and Social Affairs (“**DOLISA**”) will provide instructions on a case by case basis or forward requests to the MOLISA.

Organization and operation of bailiffs

On 8 January 2020, as a result of the pilot study of bailiffs in Ho Chi Minh City, the Government has promulgated Decree No. 08/2020/ND-CP regulating the organization and operation of bailiffs (“**Decree 8**”).

Decree 8 provides regulations regarding bailiff practicing organizations; authority, scope and procedures of work conducted by the bailiffs; supervision of operation of the bailiffs; resolution of complaints, denunciations and disputes; and the State administration of the bailiffs.

Standards for appointment of Bailiffs

A bailiff is a person who satisfies the statutory standards to be appointed by the State to serve legal process (“*tống đạ*” in Vietnamese), to prepare written statements of evidence (“*lập vi bằng*” in Vietnamese), to verify conditions for enforcement of civil judgments and to arrange such enforcement. To be appointed as a bailiff, the following standards should be satisfied:

- (a) being a Vietnamese citizen not more than 65 years old, permanently residing in Vietnam, complying with the Constitution of Vietnam and the laws, and having good ethics;
- (b) having a university or post-university law degree;
- (c) having legal work experience of three (3) years or more in an agency or organization after university or post-university graduation;
- (d) having graduated from a professional bailiff training course or a recognized equivalent training course or having completed the bailiff short study course; and
- (e) having satisfied a check on the results of the probationary term as a bailiff.

Persons with equivalent professional bailiff training courses overseas may become bailiffs only when

their diplomas are recognized by the Ministry of Justice of Vietnam.

Scope of work conducted by bailiffs

Bailiffs are permitted to carry out the following acts:

- (a) to serve legal process such as papers, documents and files of the people's courts, people's procuracies, civil judgment enforcement agencies and foreign competent authorities related to mutual legal assistance in the civil sector;
- (b) to prepare written statements of evidence recording true facts and true acts pursuant to a request from an entity;
- (c) to verify conditions for enforcement/execution of judgments for enforcing a civil judgment within the enforcement authority of civil judgment enforcement agencies in the province where the bailiff office is located; and
- (d) to arrange enforcement of court verdicts and decisions at the request of litigants.

Bailiff Offices

A bailiff office is a bailiff practicing organization conducting works assigned in accordance with Decree 8 and other relevant laws. If a Bailiff Office is established by one bailiff, it is required to be organized in the form of a private enterprise ("*doanh nghiệp tư nhân*" in Vietnamese). If by two or more bailiffs, the Bailiff Office shall be organized in the form of a partnership ("*công ty hợp danh*" in Vietnamese).

A Bailiff Office has the following rights:

- (a) to sign labour contracts with bailiffs and with professional secretaries;
- (b) to collect, manage and use fees for conducting bailiff's works;
- (c) to sign contracts or agreements with people making requests; and
- (d) other rights in accordance with Decree 8 and other relevant laws.

Decree 8 took effect on 24 February 2020 and supersedes Decree No. 61/2009/ND-CP on pilot organization and operation of bailiffs in Ho Chi Minh City (as amended by Decree No. 53/2013/ND-CP dated 18 October 2013).

About Indochine Counsel

Established in October 2006, Indochine Counsel is one of the leading business law firms in Vietnam. The firm provides professional legal services for corporate clients making investments and doing business in Vietnam. The legal practitioners at Indochine Counsel are well qualified and possess substantial experience from both international law firms and domestic law firms. The firm boasts more than 45 legal professionals working at the main office in Ho Chi Minh City and a branch office in Hanoi.

Indochine Counsel's objective is to provide quality legal services and add value to clients through effective customized legal solutions that work specifically for the client. The firm represents local, regional and international clients in a broad range of matters including transactional work and cross-border transactions. The firm's clients are diverse, ranging from multinational corporations, foreign investors, banks and financial institutions, securities firms, funds and asset management companies, international organizations, law firms to private companies, SMEs and start-up firms in Vietnam.

Indochine Counsel advises clients in the following areas:

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- Taxation
- Intellectual Property
- Technology & Media
- Mining & Energy
- International Trade
- Dispute Resolution

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